

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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**UNITED STATES OF AMERICA,**

Criminal No. 02-355 (MJD/JGL)

Plaintiff,

v.

**REPORT AND  
RECOMMENDATION**

**JOCAT OCTAVIO JANEZ (01), a/k/a  
"Tony,"**

Defendant.

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APPEARANCES

Ann Anaya, Esq., Assistant United States Attorney, on behalf of Plaintiff  
United States of America

Andrea George, Esq., Assistant Federal Public Defender, on behalf of Jocat  
Octavio Janez

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JONATHAN LEBEDOFF, Chief United States Magistrate Judge

The above-entitled matter came before the undersigned Chief Magistrate Judge on Motions by Defendant. The matter is scheduled to be tried before the Honorable Michael J. Davis beginning on July 18, 2005. The case has been referred to the undersigned for resolution of pretrial matters pursuant to 28 U.S.C. § 636(b)(1) and D. Minn. LR 72.1.

On November 13, 2002, Defendant Jocat Octavio Janez (01) was indicted, along with Constantino Bustos Contreres (02), on one charge of

Conspiracy to Distribute and Possess with Intent to Distribute in excess of five hundred grams or more of a mixture and substance containing a detectable amount of cocaine in violation of 21 U.S.C. §§ 846 and 841(b)(a)(B) (Count I). Count II charged Defendants Janez and Contreres with Aiding and Abetting Possession with Intent to Distribute cocaine, in contravention of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). Contreres was immediately arrested, and entered into a plea agreement with the Government in February 2003. However, the bench warrant issued for Defendant Janez in November 2002 was not returned until April 2005.

Defendant Janez is now detained and, through his counsel, has filed several pretrial motions including boilerplate Motions to Suppress Evidence and to Suppress Statements, Admissions, and Answers. Defendant filed no other dispositive motion, nor any other motion for which testimony or evidence would be taken. Prior to the pretrial motions hearing scheduled for May 26, 2005, this Court received an averment from the Government that there were no searches conducted in this matter and no statements made by Defendant Janez. Additionally, the Government has neither voiced nor filed any opposition to Defendant's non-dispositive motions.

Accordingly, and upon the oral stipulation of counsel, the Court cancelled the scheduled motions hearing. Instead, this Report and

Recommendation addresses Defendant's dispositive motions, while an accompanying Order addresses the non-dispositive motions on the papers.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED:**

(1) Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure (Doc. No. 36) should be **DENIED AS MOOT** as there are none; and

(2) Defendant's Motion to Suppress Statements, Admissions and Answers (Doc. No. 37) should be **DENIED AS MOOT** as there are none.

Dated: May 31, 2005

s/ Jonathan Lebedoff  
JONATHAN LEBEDOFF  
Chief United States Magistrate Judge

Pursuant to D. Minn. LR 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court and serving all parties by June 17, 2005, a copy of specific, written objections. A party may respond to the objections within ten days after service thereof. All objections and responses filed under this rule shall not exceed 3,500 words. A District Judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the United States Court of Appeals for the Eighth Circuit. Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and

Recommendation, the party making the objections shall timely order and cause to be filed within ten days a complete transcript of the hearing.